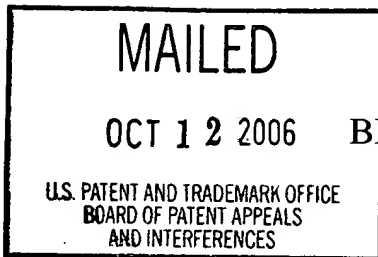


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte MICHAEL L. IMUNDO and JOHN R. DAILIDONIS

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Application No. 09/853,945

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on September 22, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matter requiring attention prior to docketing is identified below:

Page 3 of the Examiner's Answer mailed June 6, 2006 contains a section heading titled "**(8) Evidence Relied Upon**" that states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal" beneath it. The Manual

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Of Patent Examining Procedure (MPEP) § 1207.02(A) (8th ed., Rev. 3, August 2005) defines the above heading as follows:

**(8) Evidence Relied Upon.** A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Since the examiner's 35 USC § 103(a) rejections are based on the prior art references to Richter (U.S. 5,913,555), Heier (U.S. 5,285,397) and Flint (U.S. 5,736,201), these references should be listed under the "(8) Evidence Relied Upon" heading in the Examiner's Answer. Correction is required.

Accordingly, it is

ORDERED that the application is returned to the Examiner:

- a) to issue a revised Examiner's Answer listing the prior art of record being relied upon in the rejection(s) of the appealed claims, and
- b) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: *G Pledge for Dale Shaw*  
DALE M. SHAW  
Acting Chief Appeals Administrator  
(571) 272-9797

DMS/vsh

Application No. 09/853,945

cc: BRINKS HOFER GILSON & LIONE  
P.O. BOX 10395  
CHICAGO, IL 60610